

Chesapeake Bay Local Assistance Board
Local Program Review Committee for the Southern Area
Chesapeake Bay Local Assistance Department
101 N. 14th Street, 17th Floor, James Monroe Building
Richmond, Virginia
Tuesday, August 13, 2002

DRAFT MINUTES

Members Present:

The Honorable Colin D. Cowling
The Honorable Daniel B. Nice

Members Absent:

The Honorable Dama E. Rice
The Honorable L. Clifford Schroeder
The Honorable Anna Lee Bamforth

Staff Present:

Mr. C. Scott Crafton, Acting Executive Director
Ms. Martha Little, Chief of Environmental Planning
Mr. Shepard Moon, Principal Environmental Planner
Mr. Doug Wetmore, Principal Environmental Planner
Mr. Lee Tyson, Principal Environmental Planner
Ms. Robbie Dundas Rhur, Senior Environmental Planner
Ms. Margaret Reynolds, Grants Program Manager

Local Government Officials Present:

City of Hampton

Mr. Keith Cannady

Town of Ashland

Mr. William Kuthy

Others:

Laura Whiteley, *JLARC*
Ellen Jackson, *JLARC*

Mr. Crafton called the meeting to order at 2:03 p.m. He briefly discussed the state revenue situation, and the recent staff resignations at the Department, and then began the items on the agenda.

Mr. Crafton recognized Mr. Tyson for staff's presentation on the City of Norfolk's Phase I program.

Mr. Tyson reported that the City's Phase I program was found consistent with the Act and Regulations on March 27, 1997. On October 20, 1998 the City adopted a number of amendments to the local Code that were primarily housekeeping in nature; however, two amendments were considered major program modifications. These dealt with criteria for granting nonconforming use and development waivers and the criteria for administratively granting exceptions for accessory structures in the seaward 50' portion of the RPA. On September 27, 1999 the CBLAB found the City's Phase I program consistent on the condition that the two amendments identified above be modified or deleted. On November 9, 1999 the City Council amended the local Code by removing the first above-identified amendment from the Code. On September 27, 2000 the CBLAB found the City's Phase I program consistent with the condition that the remaining item be modified or deleted by June 30, 2001. Two deadline extensions were granted to the City to complete this task; the final deadline being June 30, 2002. On July 9, 2002 the City Council amended the Code to remove the language concerning the administrative approval of exceptions for accessory structures in the seaward 50' portion of the RPA. Staff recommends that the City of Norfolk's Phase I program is now fully consistent with the Act and Regulations and further recommends adoption of the resolution.

Since there was no one present from the City, Mr. Crafton asked if there were any questions or discussion. Hearing none, he called for the question. On a motion by Mr. Nice, seconded by Mr. Cowling, the Committee voted 2-0 to adopt the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the City of Norfolk's amended Phase I program be found consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

Mr. Crafton then recognized Ms. Rhur for staff's presentation regarding Chesterfield County's Phase II program.

Ms. Rhur stated that on March 15, 2000 Chesterfield County adopted the last updates to its comprehensive plan. CBLAD staff reviewed the update and on September 18, 2000, the Chesapeake Bay Local Assistance Board (the Board) found Chesterfield County's Phase II program consistent with eight conditions and established a compliance deadline of June 30, 2001.

Ms. Rhur then stated that on August 14, 2001 Chesterfield County requested a six month extension for the compliance deadline to December 31, 2001. The Southern Area Review Committee reviewed the County's reasons for the extension request and after a brief conversation about the County's work load recommended that the deadline be extended to June 30, 2002. On September 17, 2001 the Board granted the extension request to June 30, 2002.

Ms. Rhur then stated that Chesterfield County's staff drafted language that addresses the eight conditions and worked closely with CBLAD staff to evaluate the progress and direction of the update. In May of 2002 County staff presented the new language to the County's Planning Commission (Commission). At that time, CBLAD staff was invited to address the Commission to explain the five policy areas required to be addressed under the Regulations. The presentation was received with some reservation; however, the Commission did move to present the new language at the Board of Supervisors meeting in June. During the June meeting the Board of Supervisors directed County staff to meet with the development community to explain why these changes were needed and answer questions regarding the new language. The Board of Supervisors also deferred a decision to adopt the additional language until August 20, 2002. It was explained to County staff, that because the County had already received a one-year extension, failure to adopt the changes by June 30, 2002 would result in Department staff's recommendation that the County's Phase II program be found inconsistent by the Chesapeake Bay Local Assistant Board.

Mr. Rhur stated that based on the review and analysis provided relative to the previous recommendations that were cited in the September 18, 2000 staff report, it is staff's opinion that because no amendments were adopted by the County prior to June 30, 2002, the comprehensive plan should be found inconsistent with the Act and Regulations.

After Ms. Rhur completed her presentation, Mr. Nice asked whether the County's Planning Commission was comfortable with the changes recommended by staff to the comprehensive plan.

Ms. Rhur responded that the County had not accepted any of the recommended changes because County staff had been directed by the Board of Supervisors to discuss the changes with the development community.

Mr. Cowling asked what the development community was uncomfortable with.

Ms. Rhur responded that she had not attended any of the meetings between County staff and the development community, but that she believed the development community thought the changes would infringe upon property rights.

Mr. Moon stated that it was his understanding that the County Board of Supervisors did not so much have a problem with the changes themselves, but rather with the fact that the Board did not believe the public had been given adequate time to review the changes.

Ms. Rhur noted that the CBLAD's local program contact person, who developed the Plan revision, is a member of the County Engineer's staff, and is not in the planning department. As a result, the Plan revision process may not have received as much public input as is typical of full Plan revisions conducted by the Planning Department. She also

noted that these changes are part of the comprehensive plan, which has no force of law, so they could not affect property rights.

Mr. Crafton stated that he believed that since the changes we have directed were being incorporated through a process somewhat different than normal, representatives of the building community were surprised when they were presented to the Planning Commission for approval. He suspects the Board of Supervisors is merely trying to provide some additional opportunities for staff to explain the reasons for and impacts of the changes, but that they would eventually adopt the changes.

Mr. Nice asked whether the County had asked for another extension.

Ms. Rhur stated that the County had not, and that the Department's recommendation to find the County inconsistent was in keeping with the precedent set by similar situations, such as that recently regarding James City County.

Ms. Rhur stated she believed that County staff would have a more definite idea as to whether the Board would adopt the changes after the County Board's meeting on August 20, 2002.

Mr. Cowling then stated that he believed the full Board should decide whether to find the County's Phase II program inconsistent, and he preferred to defer the matter to the Board's September meeting for consideration by the full Board.

Since there was no one present from the County, Mr. Crafton called for a motion. On a motion by Mr. Cowling, seconded by Mr. Nice, the Committee voted 2-0 for the following:

The Southern Area Review Committee moved to defer consideration of the proposed resolution finding Chesterfield County inconsistent with Phase II Bay Act requirements pertaining to its comprehensive plan to the full Board at its September 16, 2002 meeting.

Mr. Crafton then recognized Ms. Rhur for staff's presentation on the Town of Ashland's Phase II program.

Ms. Rhur stated that the comprehensive plan (Plan) for the Town of Ashland was developed in 1982. In 1994, the Town received a grant from the Chesapeake Bay Local Assistance Department (CBLAD) to assist them with an update. In 1996, the Town annexed 3.1 square miles of additional land from Hanover County. This annexation and staff turnover delayed the revision of the Plan. In 1999, the Chesapeake Bay Local Assistance Board (the Board) established a compliance deadline of June 30, 2000; the deadline was extended to December 31, 2000. On December 19, 2000 Ashland adopted a revised Plan and on March 19, 2001 the Board found the Town consistent with the Act and Regulations subject to one condition being met no later than March 31, 2002.

Ms. Rhur continued with an analysis of the amendments:

Amendments to the Plan add two objectives relating to redevelopment. These include:

1. The need to manage redevelopment so that it complies with all aspects of the Town's Chesapeake Bay Ordinance
2. Addresses all post redevelopment water quality so that a ten percent reduction in nutrient runoff is achieved over pre-redevelopment conditions.

The Plan also discusses several implementation strategies:

1. The Town's intent to fully implement the Bay Act, including provisions for redevelopment.
2. A second strategy requires the developer to identify underground storage tanks that may be present and remove them as redevelopment occurs. Additionally, they are required to update sewer connections and submit a stormwater management plan that upgrades best management practices (BMPs) or installs them in order to accommodate the new use and brings the project into compliance with improved water quality standards.

Suggestion:

Although the Town has minimally addressed this condition, we suggest that when the Plan is next revised the Town include a more thorough analysis of opportunities to improve water quality as redevelopment occurs.

Ms. Rhur stated that the amendment made to the Town of Ashland's comprehensive plan examines the relationship between water quality and redevelopment to a satisfactory degree. She said that, therefore, staff believes that the condition set forth by the Board on March 19, 2001 has been met, and staff recommends that Ashland's Phase II program be found consistent with the Act and Regulations.

After Ms. Rhur concluded her presentation, Mr. Nice asked Mr. William Kuthy, Ashland's Town Planner, what the Town was doing about the underground storage tanks discussed in the staff report. Mr. Kuthy responded that the Town was removing them as required, and briefly discussed the Town's process.

Mr. Crafton called for a motion. On a motion by Mr. Cowling, seconded by Mr. Nice, the Committee voted 2-0 to adopt the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Ashland's Phase II program be found consistent with § 10.1-2109 of the Act and §9VAC10-20-60.3 of the Regulations.

Mr. Crafton then recognized Mr. Wetmore for staff's presentation on the City of Hampton's Phase II program.

Mr. Wetmore indicated that on September 27, 1999, the Chesapeake Bay Local Assistance Board established a Phase II consistency deadline of December 1, 2001 and that on March 18, 2002, the Board granted a six-month extension to the City's Phase II consistency deadline and established June 30, 2002 as the new compliance date. Mr. Wetmore stated that on May 22, 2002, the Hampton City Council adopted comprehensive plan amendments intended to address consistency with the Bay Act. Mr. Wetmore continued by noting that it was the initial review of the city's comprehensive plan.

Mr. Wetmore indicated that the comprehensive plan provided a detailed description of the sensitive environmental features located within the city and that the Plan contained maps of these features, including the location of all Chesapeake Bay Preservation Areas. Mr. Wetmore continued by stating that the city had several programs in place to protect these features, such as Chesapeake Bay Preservation Area zoning, flood zone requirements, citywide stormwater management regulations, and environmental education programs. Because of the lack of developable land (less than 10%) and the city's existing environmental programs, Mr. Wetmore explained that Department and city staff concurred that new comprehensive plan policies addressing "Physical Constraints to Development" would be unnecessary.

Mr. Wetmore continued with a discussion of the "Protection of Potable Water Supply" policy area. He indicated that the city had identified multitudes of possible threats to potable water supply and mapped the locations of all landfills, hazardous materials sites, Superfund sites, and leaking underground storage tanks. Mr. Wetmore indicated that the Plan recognized that the city's existing stormwater management, environmental education, and sanitary sewer programs played an important role in the protection of groundwater resources, which ultimately contributes to the protection of potable water supply. Mr. Wetmore explained that the Plan contained several policies intended to protect the city's potable water supply and groundwater resources.

Mr. Wetmore continued with a discussion of the "Shoreline Erosion Control" policy area. He indicated that because the majority of the city's shoreline was developed, the comprehensive plan acknowledged that eroding shorelines could become a significant problem. Mr. Wetmore stated that the city had a Beach Management Plan and was also working with the U.S. Army Corps of Engineers on a Chesapeake Bay Shoreline Protection Study. He continued by saying that the comprehensive plan contained several policies to address shoreline erosion such as recommending natural or non-structural control methods, encouraging regional erosion control planning efforts, and identifying banks and shorelines where buffer restoration or expansion may be a feasible option.

Mr. Wetmore continued with a discussion of the "Public and Private Access to Waterfront Areas" policy area. Mr. Wetmore indicated that several chapters of the Plan contained information about public and private access to waterfront areas and that the

comprehensive plan identified water quality degradation as a possible negative side effect of increased waterfront access and it incorporated several policies to address these environmental concerns.

Mr. Wetmore continued with a discussion of the “Water Quality Improvement Through Redevelopment” policy area. He indicated that because over 90 percent of Hampton was developed, the greatest potential for water quality improvement in the city would most likely be through the redevelopment process. Mr. Wetmore said that the Plan presented multiple policies directed at achieving water quality improvements through the redevelopment of existing developed areas. He stated that these policies included encouraging the re-establishment of the RPA buffer, identifying sites for potential stormwater BMP retrofits, exploring non-regulatory approaches to protect the RPA buffer, and incorporating CBPA requirements into all area redevelopment plans and neighborhood plans.

Mr. Wetmore concluded by stating that the 1989 comprehensive plan contained extensive environmental information, but recent amendments have transformed the Plan into a document that thoroughly incorporates the goals and expectations of the Chesapeake Bay Preservation Act. He indicated that Staff recommended that the City of Hampton’s 2010 Comprehensive Plan, as amended on May 22, 2002 be found consistent with the Act and Regulations.

Mr. Wetmore then praised Mr. Keith Cannady and the city for their excellent work on their comprehensive plan.

Mr. Crafton then asked Mr. Keith Cannady, of the Hampton Planning Staff, whether he would like to add anything to staff’s presentation. Mr. Cannady declined, except to thank the Board for its patience and to thank Doug Wetmore for his assistance in bringing this matter to a successful conclusion.

Mr. Crafton called for a motion. On a motion by Mr. Nice, seconded by Mr. Cowling, the Committee voted 2-0 to adopt the following:

The Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the City of Hampton’s Phase II program be found consistent with § 10.1-2109 of the Act and §9VAC10-20-60.3 of the Regulations.

Mr. Cowling then asked Mr. Crafton whether the Chesapeake Bay Preservation Act applied to the activities of the Chesapeake Bay Bridge Tunnel authorities. Mr. Crafton responded that the Department had investigated that issue, and had found that it did not, and had therefore encouraged the local governments on either side of the bridge to try to ensure that the associated land disturbance activities were in accord with the Act.

There being no further business before the Committee, Mr. Crafton adjourned the meeting at 2:33 p.m.